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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970
NO. 1834

JACK ROSE
Petitioner, Defendant and Appellant Below

vs.

DORIS ROSE
Respondent, Plaintiff and Appellee Below

BRIEF IN REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that consideration be given to this brief addressed to arguments first raised in respondent's Brief in Opposition to Petition for Writ of Certiorari.

ARGUMENT

Mr. Barris' Brief in Opposition to Petition for Writ of Certiorari is fraught with factual "mistakes" as usual. Petitioner will pass these "mistakes" for the present and address himself to the three points raised in the Legal Argument.

I.
THE PETITION FOR WRIT OF CERTIORARI IS TIMELY AND THUS THIS HONORABLE COURT DOES HAVE JURISDICTION TO ENTERTAIN SAME.

When petitioner's application for rehearing was denied by the Court of Appeals (please see the Petition, Appendix H, p. 26), petitioner submitted another application for rehearing. Petitioner was not just being a "wise guy"; the second application for rehearing raised arguments that could not have been raised in the first application. The Clerk of the Court of Appeals refused to file the second application for rehearing, so petitioner applied for leave to appeal to the Michigan Supreme Court. Leave to appeal was denied on October 29, 1970, and so petitioner started to prepare a petition to this Honorable Court for writ of certiorari. While he was preparing this petition (within the 90 day period set forth in 28 U.S.C. Sec. 2101(c)), the Court of Appeals decided to accept petitioner's second application for rehearing. *Naturally, petitioner did not proceed with the petition for writ of certiorari—an application for rehearing was pending in the Court of Appeals.* Petitioner understood his counsel to say that he had to exhaust his state remedies before he could apply for relief to this Honorable Court.

Evidently Mr. Barris is confusing a denial of leave to appeal with an affirmation. Denial of leave to appeal or a dismissal by an appellate court does not constitute an adjudication on the merits of the appeal. Only an affirmation can do that. Dismissal in an appellate court is analogous to a dismissal *without* prejudice in a trial court. Affirmation in an appellate court is analogous to a dismissal *with* prejudice in a trial court. If the Michigan Supreme

Court had affirmed the Court of Appeals' order of dismissal, Mr. Barris' argument might have been well taken. But there was no affirmation. Denial of an application for leave to appeal puts the parties in the same position they would have been in if the application had never been filed. In the instant case it left the parties awaiting a decision from the Court of Appeals on petitioner's second application for rehearing. Denial of leave to appeal a judgment does not render that judgment final when an application for rehearing is pending in the court below.

To illustrate the folly of Mr. Barris' argument, suppose the Court of Appeals had entered an order granting petitioner's second application for rehearing. Would Mr. Barris then say that such an order must be set aside because the Michigan Supreme Court had already denied leave to appeal?

If Mr. Barris is implying that petitioner tried to mislead this Honorable Court when he 'conveniently "overlooked"' the Michigan Supreme Court order of October 29, 1970 (please see Brief in Opposition to Petition, p. 2) then petitioner resents the implication. Petitioner made no reference to the order because it was irrelevant.

II.

ALL FEDERAL QUESTIONS HAVE BEEN PROPERLY PRESERVED FOR REVIEW BY THIS HONORABLE COURT.

As Mr. Barris himself has demonstrated on page 67 of his Brief in Opposition to Petition for Writ of Certiorari, petitioner's application for leave to appeal to the Michigan Supreme Court incorporated his brief to the Court of Appeals. This brief to the Court of Appeals raised the same

issues which petitioner now urges before this Honorable Court. Petitioner could not have pointed out with particularity to the Michigan Supreme Court the errors committed by the Court of Appeals in deciding the merits of the appeal because the Court of Appeals never decided anything concerning the merits of the appeal. What more could petitioner have done to preserve the issues?

III.

THE CONTENTION THAT THE PETITIONER WAS NOT AFFORDED DUE PROCESS WHERE HE WAS DENIED HIS CONSTITUTIONAL RIGHT TO DEFEND HIS SUIT IN HIS OWN PROPER PERSON IS NOT ONLY A FEDERAL QUESTION OF SUBSTANCE WITHIN THE PURVIEW OF RULE 19 OF THIS HONORABLE COURT, BUT IS ALSO HIGHLY MERITORIOUS.

It is true that petitioner was granted an opportunity to make a partial defense. But a *partial* defense is not a *full* defense. Due process guarantees a full defense. The bulk of petitioner's defense, had he been allowed to make it, would have been affirmative in nature. Judge Thorburn denied petitioner's request to raise affirmative defenses at the "trial" for the reason that they were never pleaded (please see the transcript of the "trial" commencing September 25, 1969, p. 375). Petitioner has no idea why his attorney-guardian failed to plead affirmative defenses, but petitioner himself was forbidden to plead them. Actually, petitioner was in the process of preparing such pleadings when his counsel pointed out to him that he was in no position to file them. Petitioner was advised that Sec. 1430 of the Revised Judicature Act (please see the Petition, p. 4) prohibited him from defending the action in person

once an attorney was appointed and that court rule[1] prohibited him even from signing the pleadings. Petitioner found himself right in the middle of a triple-horn dilemma. If he signed the pleadings himself and filed them, Judge Thorburn would then proclaim loudly and piously that petitioner's "blatant and persistent refusal to comply with the rules" necessitated the appointment of an attorney-guardian. If petitioner asked his attorney-guardian to sign the pleadings, then Judge Thorburn would claim that petitioner had ratified his appointment of the attorney-guardian. If petitioner complied with the rules and filed no pleadings, then he risked being denied a full defense. Right up until the "trial" petitioner was trying to learn from Judge Thorburn who must sign the pleadings (please see Appendix R, p. 19). But Judge Thorburn wasn't talking. Petitioner decided to adhere strictly to the rules. He ceased defending himself in the trial court and mistakenly placed his trust in the Court of Appeals to vacate the order of appointment of the attorney-guardian. Even the partial defense made by petitioner was involuntary. He attended the "trial" only because he was ordered to attend (please see the transcript of the "trial" commencing September 25, 1969, p 12). Failure to attend would have resulted in another jail sentence.

It is bad enough that Judge Thorburn sets himself above the law. But what is even worse is his refusal to give

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[1] GCR 114 Signing of Pleadings.

.1 Signature. Every pleading of a party represented by an attorney shall be signed by at least 1 attorney of record in his individual name, whose business address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule, pleadings need not be verified or accompanied by affidavit.

advance notice of which laws he is going to violate. He waits until petitioner commits himself before deciding which rules he will ignore. Petitioner is helpless against this strategy of entrapment. This is the very reason for the "settled procedure" requirement of due process. Petitioner tried to point all this out to Judge Thorburn. The attempt cost petitioner another month in the Oakland County jail (please see Appendix S, p 20).

Mr. Andrews' "defense" was less than worthless; it was actually prejudicial to petitioner's interests. This was not Mr. Andrews' fault. He did his best to do what he thought was best for petitioner. The problem was, of course, that he had no way of knowing what was best for petitioner.

Mr. Barris makes a poor analogy when he says that petitioner "had two bites at the litigation apple". It would be more accurate to say that petitioner had two pieces of rotten apple crammed down his throat. Furthermore, Mr. Barris is stealing petitioner's thunder. It was the petitioner who insisted that the respondent already "had two bites at the litigation apple" when he was called upon to defend the third successive divorce action brought against him.

True—petitioner has been unable to cite one case in support of his contention that he was denied due process of law. He doubts that there is one case in the annals of Anglo-American jurisprudence where a judge has appointed an attorney-guardian for a litigant of full age and sound mind over that litigant's objection. It is the very lack of cases which supports petitioner's contention.

Mr. Barris is intentionally confusing "incompetency" with "incompetency to represent oneself". Just plain "incompetency" is synonymous with "lunacy", "insanity", "mental disease", "mental incompetency", or "being of un-

sound mind". "Incompetency to represent oneself" means only that a person is unqualified to act as an attorney. Almost all laymen are incompetent to represent themselves. Would Mr. Barris say that almost all laymen are mentally incompetent? Even Judge Thorburn made a clear distinction when he said to petitioner on April 23, 1969. "The Court is of the opinion, first of all, that this is not a determination as to your lunacy or insanity or whether or not you are a victim of a mental disease. The issue is whether or not you are competent in this piece of litigation to represent yourself. The Court is of the opinion that you are not." Mr. Barris commits a serious breach of Canon 22 of the Canons of Professional Ethics of the American Bar Association[2] when he cites Michigan General

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[2] Canon 22. Candor and Fairness.

The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a textbook; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved; or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence which he knows the Court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the Judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

Court Rule 201.5 and *Sengstack* v. *Sengstack* (please see Brief in Opposition to Petition, p. 13 and p. 35). Both the court rule and the decision are concerned with mental incompetency. They have no application whatsoever to a person who is merely incompetent to represent himself—and Mr. Barris knows it.

Having already received $85,000, Mr. Barris insists that the Petition raises no federal question of substance. How much more substantial would Mr. Barris find the issues to be were he paying out the money rather than receiving it?

PETITIONER CAN SEE NO REASON WHY THE MATTER OF THE FILING OF TRANSCRIPTS WITH THE CLERK OF THE TRIAL COURT SHOULD BE AN ISSUE IN THIS HONORABLE COURT. But just in case it is going to be an issue, petitioner appends to this Brief his Reply Brief (please see Appendix T, p. 25) in Support of Application for Leave to Appeal to the Michigan Supreme Court (please see Brief in Opposition to Petition, Appendices B and D, p. 16 and p. 46).

This entire matter would never have arisen were it not for Mr. Barris' stubborn and unreasonable demand for transcripts which he himself finally admitted he was not entitled to. It was not until his motion of January 5, 1970 (please see Brief in Opposition to Petition, Appendix C, p. 44) that Mr. Barris withdrew his unreasonable demand for transcripts of the earlier pretrial hearings. Petitioner could not have satisfied Mr. Barris' demand for the filing of transcripts *before* January 5, 1970, because Mr. Barris was still insisting on transcripts of *all* pretrial hearings. Nor could petitioner have satisfied Mr. Barris' demand for the filing of transcripts *after* January 5, 1970, because

the time for filing of these transcripts had long expired.[3] Without a court order granting further time in advance the filing of the transcripts would have been invalid.[4] Mr. Barris' motion of January 5, 1970 requested just such an order from the Court of Appeals. What could petitioner have done but wait for the Court of Appeals to act on that motion. Even Mr. Barris' letter of November 13, 1969 (please see Brief in Opposition to Petition, p. 6), the first notice petitioner had of his alleged failure to comply

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[3] GCR 812.3 Duties of Stenographer re Transcript.

(1) An appellant desiring to transmit a transcript of testimony as part of the record on appeal, shall, within the time for taking an appeal, unless extended as provided in subrule 812.2, file same with the clerk of the trial court, or produce and file in the trial court a certificate from the stenographer of the trial court stating that a transcript of the testimony and hearings has been ordered, that payment therefor has been made or secured, and that the same will be furnished as soon as possible by said stenographer...

GCR 803 Time for Taking Appeal.

.1 Appeal as of Right. Appeal to the Court of Appeals as of right in civil cases, shall be taken not later than 20 days after the entry of the judgment or order appealed from, or within 20 days after the entry of an order denying a motion for a new trial or rehearing, provided such motion is made and served (a) within 20 days after the entry of the judgment or order appealed from, or (b) with such further time as may be allowed by the trial court during such 20 day period. ...

[4] GCR 804.2

Failure to Comply; Motion to Dismiss. For failure to properly and timely perform any act required on appeal by any rule, the appeal may be dismissed on motion by the Court of Appeals, or further time granted on terms. No act on appeal shall be deemed insufficient unless motion to dismiss the appeal or to strike or correct the act be made within 15 days after service of notice of performance of such act. No performance of an act on appeal after the time provided shall be deemed valid unless further time therefor has been granted in advance by the trial court, tribunal or officer; or by the Court of Appeals. No motion for further time shall be heard in the trial court or tribunal while a motion to dismiss is pending in the Court of Appeals.

with the court rules, was not sent until after it was already too late to comply. More entrapment! How unfair can a court be? Admittedly, petitioner can offer no reason why Michigan General Court Rule 812.3(1) should apply to this case; this appellant had *no* desire to transmit the contested transcripts as part of the record on appeal. But if the rule does not apply, then why was the appeal dismissed? The order of dismissal itself gives no clue (please see the Petition, Appendix G, p. 23).

IT IS THE HEIGHT OF IRONY THAT MR. BARRIS SHOULD COMPLAIN OF PETITIONER'S "BLATANT AND PERSISTENT REFUSAL TO COMPLY WITH THE RULES". Petitioner has never breached a single rule. He is in this predicament because of his strict insistence on living up to the rules. On the other hand, the instances of blatant and persistent refusal on the part of Mr. Barris and other members of the Michigan judiciary to comply with the rules are too numerous to mention individually in this brief. To illustrate this point petitioner selects just one court order and lists the violations committed by members of the Michigan judiciary in connection with its entry and appeal. The order selected is found in respondent's Brief in Opposition to Petition for Writ of Certiorari, Appendix E, page 89.

RULE VIOLATIONS IN CONNECTION WITH ORDER AUTHORIZING AND REQUIRING CLERK OF OAKLAND COUNTY TO DISBURSE CERTAIN FUNDS.

1) *Neither the motion for the order nor notice of hearing thereof was served on petitioner 4 days or more before the "hearing" on February 17, 1971.*

GCR 108.4.

Time for Service of ~~Motions~~ and Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 4 days before the time specified for the hearing, unless a different period is fixed by these rules or for good cause shown, and in such latter event, authorization by the court shall be endorsed in writing on the face of the notice or by separate order. When a motion is supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided by these rules, opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

2) *No proof of service upon petitioner was filed on or before February 17, 1971.*

GCR 107.4.

Proof of Service. Except as otherwise provided by Rule 105 or 106, proof of service of all papers required or permitted to be served may be by written acknowledgment of service, by affidavit of the person making service, or by any other proof satisfactory to the court. Proof of such service shall be filed at or prior to the time of hearing.

3) *No praecipe was filed with the Assignment Clerk one week or more before February 17, 1971.*

Rules of the Circuit Court for the Sixth Judicial Circuit of Michigan. Rule 10.

Miscellaneous Calendar.

The forenoon of the first Wednesday of each term, and the forenoon of each Wednesday thereafter shall be motion days, and hearings on all motions and petitions shall be noticed for such days unless otherwise ordered by the Court. Any attorney de-

> siring to obtain a hearing of any pro confesso or default case, motion or miscellaneous matter, shall file a praecipe with the Assignment Clerk on or before the Wednesday preceding the Wednesday at which the same shall have been noticed. On Thursday of each week the Assignment Clerk shall, under the direction of the presiding judge, prepare a list of all such matters, showing the judge before whom the same will be heard, and shall cause a copy of such list to be published in the Pontiac-Oakland County Legal News in the issue preceding such hearing.

4) No praecipe having been filed, the motion for the order was not included on the "list of all such matters" prepared by the Assignment Clerk. Several weeks after February 17 petitioner asked Judge Thorburn's Clerk how he happened to call the motion for hearing in open court on that motion day — the matter not appearing on the Assignment Clerk's docket. He concluded that Judge Thorburn had told him to call the motion. There can only be one explanation for this. *There was ex parte communication between Judge Thorburn and Mr. Barris.*

> Canons of Judicial Ethics of the American Bar Association. Canon 17. Ex Parte Communications.
>
> A judge should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for *ex parte* application.
>
> While the conditions under which briefs of argument are to be received are largely matters of local rule or practice, he should not permit the contents of such brief presented to him to be concealed from

> opposing counsel. Ordinarily all communications of counsel to the judge intended or calculated to influence action should be made known to opposing counsel.

Mr. Barris accuses petitioner of bordering on paranoia (please see Brief in Opposition to Petition, p. 4, footnote 1). Paranoia is characterized by delusions of others plotting against the person afflicted behind his back. Is petitioner suffering from delusions or *did* Judge Thorburn and Mr. Barris plot against petitioner behind his back?

5) The record discloses that petitioner was not given notice of the motion for the order, that he did not appear voluntarily at the "hearing", that he was not afforded an opportunity to defend the motion, that the order is invalid for lack of due process.

The Oakland County Clerk disbursed the funds despite prior notice to him and Judge Thorburn of this lack of due process.

> U. S. Constitution. Amendment XIV, Sec. 1
> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law, . . .

6) *The Oakland County Clerk disbursed the funds despite prior notice to him and Judge Thorburn that petitioner had filed a claim of appeal of the order.*

> GCR 802.2 Effect of Filing Claim of Appeal.
> (2) When an appeal is taken while property is being held for conservation or management under the order or judgment of the trial court, such court shall retain jurisdiction over such property pending appeal unless a stay of proceedings has been had pursuant to Rule 808, or except as the Supreme Court or Court of Appeals shall otherwise order.

7) *Judge Thorburn, Mr. Barris, and the Oakland County Clerk participated in proceedings to enforce the judgment entered October 22, 1969 despite prior notice to them of Court of Appeals orders forbidding them to do so.*

> Excerpt from Court of Appeals Order of June 9, 1970.
>
> It is further ordered that the issuance of execution and any other or further proceedings to enforce the judgment entered October 22, 1969 be, and the same are hereby stayed.
>
> Excerpt from Court of Appeals Order of August 26, 1970.
>
> It is further ordered that this Court's order dated January 30, 1970 and modified on June 9, 1970 shall remain in full force and effect until the judgment of divorce is satisfied in toto as to the interest of Doris Wertheimer Rose and Ivan E. Barris. (Please see the Petition, Appendix H, p. 26)

8) On February 17, 1971 appeals of Oakland County Circuit Court case numbers 9276, 22744, and 68-47753 were pending in the Court of Appeals (Docket numbers 10460, 10461, and 10462). *The trial court was without jurisdiction even to entertain the motion for the order.*

> GCR 802 Manner and Effect of Taking Appeals.
>
> .1 Filing Claim of Appeal; Fees. Every appeal to the Court of Appeals shall be taken by filing a claim of appeal with the Court of Appeals and paying the entry fee required by subrule 822.3(1). A docket number shall thereupon be assigned to such appeal by the clerk of the Court of Appeals. See also subrule 803.5. The Court of Appeals shall thereupon have jurisdiction of the case. . . .

9) *On May 5 the Court of Appeals dismissed petitioner's appeal of the order without benefit of a stipulation or a motion.*

GCR 802.1

> . . . No such appeal shall be dismissed except on stipulation, on special motion and notice, or by the Court of Appeals on its own motion, subject, however, to the provisions of Rule 809.

Nine violations arising from a single order. And these are only procedural violations having nothing to do with the merits of the motion for the order. How many more violations would an attorney have found? How many violations have there been in seven years of litigation committed not by petitioner but by members of the Michigan judiciary, who sanctimoniously and hypocritically accuse petitioner of the very offense they themselves are guilty of—"blatant and persistent refusal to comply with the rules"?

MR. BARRIS' ACCUSATION OF "EMOTIONAL INSTABILITY" COMES AS NO SURPRISE TO PETITIONER. That strategy is as old as mankind. A person who is defenseless against an accusation of wrongdoing accuses his accuser of lunacy. While petitioner denies that he is emotionally unstable, he will admit that he is emotionally involved in this litigation. He makes no apology for this. The relationship between man and wife is, after all, an emotional one. Petitioner cannot be dispassionate about his marriage. Indeed! If he were, Judge Thorburn would be the first to say that he was unfeeling and cruel.

Petitioner will also admit that he has become terribly embittered against the Michigan judiciary. All he could do was nurse his indignation as the Michigan courts toyed with him mercilessly for seven years just to keep him paying out attorney fees. To extort from a man is bad enough, but to extort from a man by using his desire and

duty to protect his marriage as the coercive tool of that extortion—what could be a greater offense against decency and morality? Every time a judge orders, urges, or bribes respondent to divorce petitioner, he becomes more embittered. No judge has any right to do such a thing. No divorce — no attorney fees; it stinks! Every time a judge sends petitioner to jail without bothering to hear him or even to look at him, petitioner's resentment rises.

If Mr. Barris has filed his Brief in Opposition to Petition for Writ of Certiorari for the purpose of showing this Honorable Court how disrespectful and contemptuous petitioner is of the Michigan judiciary, he need not have troubled. Petitioner acknowledges with regret that he has lost his respect for many courts of Michigan. The sad truth is that in general we do not have courts of justice in Michigan — we only have corrupt benefit agencies for attorneys. Too many judges in this state, like Judge Thorburn, have no interest in dispensing justice; all they care about dispensing is attorney fees. Petitioner has been in business in Michigan for sixteen years. He has been exposed to a wide variety of graft and bribery. But he never knew the meaning of the term "corruption" until he was involved with the Michigan courts. It hurts petitioner to say this, but it is something that has to be said. Some attorneys in Michigan, such as Mr. Barris, take an active part in this corruption, engaging in bribery and kickbacks. Many attorneys are as appalled by the corruption as petitioner is, even though they are the beneficiaries of it. But no attorney will voice an objection. Petitioner would not even ask an attorney to "buck the machine"; it would surely spell the destruction of his career — of his very livelihood. As a result, this corrup-

tion becomes self-perpetuating. It can never be cured from within. The Michigan judiciary has become hermetically sealed in its own miasma. This pernicious condition will persist hopelessly forever unless some external treatment is applied. To that end petitioner implores this Honorable Court to provide a tribunal to receive his evidence of corruption in the Michigan Courts. Let petitioner prove that he is not just an irresponsible name-caller as Mr. Barris would have this Court believe. Petitioner was advised by counsel that the best way he could persuade this Honorable Court to *deny* his petition for writ of certiorari was to raise the matter of corruption in the Michigan Courts. Well, petitioner *does* want the subject judgment to be reviewed and declared invalid by this Honorable Court. But he wants more — he wants an honest judiciary in Michigan.

RELIEF

Petitioner begs this Honorable Court to provide a tribunal to sit at Detroit, Michigan for the purpose of receiving petitioner's evidence of corruption in the Michigan judiciary.

Dated: July 23, 1971.

Jack Rose
23999 West Ten Mile Road
Southfield, Michigan 48075

APPENDIX R

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF OAKLAND

DORIS ROSE, Plaintiff,		No. 9276
vs.		22744
JACK ROSE, Defendant.		68-47753

MOTION FOR ADJOURNMENT

Now comes defendant and petitions this court for an adjournment of the trial scheduled on September 25, 1969. Defendant is unable to prepare a defense until he learns what accusations he has to defend against and who must sign the pleadings.

Jack Rose
6186 W. Outer Drive
Detroit, Michigan 48235
352-0952

Dated: September 16, 1969

APPENDIX S
HANDWRITTEN LETTER FROM PETITIONER TO TRIAL JUDGE

Feb. 7, 1971

James S. Thorburn
Oakland Co. Circuit Judge
Court Tower
Pontiac, Mich.

My dear Judge Thorburn:

I know that you will not be surprised to see that this letter comes from the Oakland Co. Jail. Surely you remember sentencing me here for 30 days on Wednesday, Feb. 3. I'm looking through the bars at the sunshine outside—fighting a losing battle against the resentment welling up within me. I hope one day that I may find it in my heart to forgive you for the terrible things you have done to me. But just now I'm so embittered against you, I doubt that I ever will. You have done to me what no man does to another; you have ruined my marriage; you have embarrassed and humiliated me; you have exposed me and my family to ridicule; you have simply ruined my life. And every time I try to put the pieces of it back together again, you come along and smash them apart by sending me to jail.

I still don't know what I did that could justify your citing me for contempt. I never wanted to enter your court room on Feb. 3 in the first place. But when the Court of Appeals refused to hear my appeal of your judgment of divorce on the merits, it threw the matter right back into your hands. I would have preferred to deal with some other tribunal, but I had no choice. I was directed back to you. When my case was called by your

clerk, Mr. Davis, I approached the lectern to present my motion. But before I could even open my mouth, you rudely announced that you would not hear me and ordered me out of the court room forthwith. I was terribly embarrassed; I had acquaintances in the court room. The reason you gave for refusing to hear me was that the Court of Appeals and the Michigan Supreme Court had affirmed your judgment of divorce. I tried to point out to you that you were mistaken — that there had been no affirmation. The only thing these courts have decided in this case is not to decide anything at all. But you refused to listen. You had me removed from the court room for trying to explain to you why I should be heard. You wouldn't even hear me to refute your erroneous reason for not hearing me.

This is smilar to the events leading up to the judgment of divorce itself. I asserted my constitutional right to defend the suit in person. You insisted on appointing an attorney for me, Mr. Steven N. Andrews, above my strenuous objections for the alleged reason that I didn't know the legal rules. Mr. Andrews couldn't possibly defend me because I refused to cooperate with him. I couldn't cooperate with him for fear of ratifying his appointment. I couldn't defend myself in person because you had already appointed an attorney for me. You told me that you gave me every opportunity to defend myself in person, but you have evidently forgotten Sec. 1430 of the Revised Judicature Act of 1961 which prohibits litigants from defending themselves in person in any case where they have an attorney, I couldn't even file pleadings. If I had, you would have been the first to say, "Now, Now, Mr. Rose, we have to follow the rules. Your pleadings will have to be signed

by Mr. Andrews." The result is that the suit wasn't defended at all. You entered judgment against me without granting me any opportunity to defend — the essential ingredient of due process. This was the basis of my motion of Feb. 3, to vacate the judgment of divorce.

You ordered me here to jail for 30 days without giving me any opportunity to explain to you why you should not send me here — another flagrant violation of the constitutional provision for due process. I realize that there is an exception to the right to be heard before the deprivation of one's liberty when a contemptuous act is committed in sight of the court *and the contemnor is cited and sentenced for contempt at that time.* In my case, however, I was *not* cited and sentenced at the time of the alleged contemptuous acts, but at a much later time. At that point there was no reason to deny me an opportunity to be heard in my defense. The right to due process being such a vital safeguard, the exception must be rigidly limited.

Last week I read a newspaper account of Michigan Supreme Court Justice Kavanagh's decision reversing you on a criminal contempt citation that had arisen during your recent tenure on the Oakland Co. one man grand jury. I understood the decision to say that a person accused of criminal contempt is entitled to a jury trial. You sentenced me for criminal contempt without a trial of any sort.

I realize, as a practical matter, that there is nothing I can do to gain my freedom. My attorney is locked up here in this cell along with me. In any case you have the *power* to keep me here. I have never questioned your power. You have a *duty* to release me from imprisonment, and in view of that duty I demand to be released im-

mediately. In view of your power, however, I expect you to ignore your duty and to sentence me to another 30 days for writing this letter. Whatever punishment you inflict on me I will accept. I have no choice. I am powerless to take any legal action to escape your tyranny. All I can do is express my indignation.

I wonder how you would feel toward me if I did to you what you have done to me. How would you feel if I succeeded in persuading your wife to divorce you against your wishes by offering her a $650,000 inducement? How would you feel if I then insisted that you were to pay the $650,000 — that you yourself were to supply the money to be used to bribe your own wife to obtain a divorce that you didn't want? How would you feel if I then subjected you to torture until you paid the $650,000? How much torture would you endure before succumbing to the humiliation of paying the bribe? How much self-restraint would you exercise in talking to me? What would you do if I announced publicly that you were insane because you resisted me? I'm not trying to be personal. I only wanted to make a point. This is exactly what you have done to me.

With regard to your suggestion that I am insane I ask you either to make a public apology or to submit the question of my sanity to a jury. What on earth ever prompted you to say such a thing? Am I insane in your eyes for asserting my constitutional right to defend my suit in person? You may feel that I am foolish, but can you say that I am insane? If self-representation is prima facie evidence of insanity, that is all right with me. But then let Article I, Sec. 13 be stricken from the Michigan Constitution. I'm not trying to make any new rules; I only want to live up to the rules we already have. Perhaps you

suggested that I am insane because I brought suit against you and Mr. Ivan E. Barris? Is any person insane who impugns your integrity? I'm sorry, Judge Thorburn, but I sincerely believe that you are dishonest. I would just be a hypocrite if I pretended that you were a man of honor.

Last summer after I had filed my complaint against you and Mr. Barris, I read Mr. Barris' reaction in both the Detroit News and the Detroit Free Press. He reportedly dared me to repeat the allegation in my complaint outside the court room. He said he would sue me for slander or libel if I did. I accept his challenge. I accuse you and Mr. Barris of conspiring to arrange costly litigation for the purpose of extorting attorney fees from me. I am sending copies of this letter to both newspapers. I invite you and Mr. Barris both to sue me for slander or libel. I am not looking forward to further involvement in still more litigation. My goal in life is simply to remove the court from it. But I am extremely anxious to submit this entire matter to a jury. I also hate to see my domestic life paraded before the public, but it seems impossible to avoid no matter what I do thanks to you.

Your litigant indignantly,
Jack Rose
Oakland Co. Jail
104 Wayne St.
Pontiac, Mich.

cc Michigan Court of Appeals
Michigan Supreme Court
Michigan Judicial Tenure Commission
State Bar of Michigan
The Detroit News
The Detroit Free Press

APPENDIX T

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from The Michigan Court of Appeals
Judges Robert J. Danhof, Timothy C. Quinn and
Louis D. McGregor

NATIONAL BANK OF DETROIT,
a National Banking Association,
Plaintiff-Appellee,

vs.

JACK ROSE,
Defendant-Appellant,
DORIS WERTHEIMER ROSE,
IVAN E. BARRIS, and
STEVEN N. ANDREWS,
Defendants-Appellees.

Supreme Court
Case No. 53044

Wayne County Circuit Court
Case #144270
Court of Appeals Case #8866

DORIS WERTHEIMER ROSE,
Plaintiff-Appellee,

vs.

JACK ROSE,
Defendant-Appellant.

Supreme Court
Case No. 53045

Oakland County Circuit Court
Case Nos. 9276, 22744 and 68-47753
Court of Appeals Case #8562

APPELLANT'S REPLY BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

"War of the Roses"—very amusing. A good pun, but a poor analogy. Where two men shoot at one another—that is a war. But where one man shoots at another, and that other only tries to escape—that is not a war; that is a hunt. (But then, who ever heard of the "Hunt of the Roses"?)

Many statements in Mr. Barris' Brief are inaccurate (as usual). But since they are also irrelevant, appellant makes no attempt to correct them with but a few exceptions.

Appellant could not believe his eyes when he read the second sentence of the Brief:

> "It is but a slight exaggeration to state that if Mr. Rose has his way the instant "War of the Roses" will span a period which, relatively speaking, will make the first War of the Roses appear to be only slightly longer than the so-called "Six Day War" fought in the Middle East in 1697."

Plaintiff brings three successive divorce actions against *defendant* over a period of six years. Then *plaintiff* blames *defendant* for the protracted litigation. Incredible! If Mr. Barris wants an end to the litigation, let him withdraw it. What does he expect from the appellant? Has appellant been "dilatory" and "litigious" because he has tried to escape Mr. Barris' bullets? Mr. Barris can end the "hunt" any time he wants to simply by putting down his gun. Appellant, on the other hand, can end the "hunt" only by receiving a bullet in the heart.

The statement beginning on the bottom of page 6 demands comment:

"Both the Trial Court and the Court of Appeals, during

some six years of litigation, have (and perhaps properly so) "bent backwards" for Mr. Rose, probably in recognition of the fact that Mr. Rose is a layman."

Both Courts have urged appellant's wife to divorce him. (Please see exhibits 14 and 15). If this is bending backwards for appellant, then he would be grateful if these Courts ceased bending backwards for him and started bending backwards instead for Mr. Barris. Appellant cannot help thinking of the popular adage, "With friends like these, who needs enemies?".

Appellant can see no point to the bulk of Mr. Barris' Brief other than to show This Court what a disrespectful, insolent, contemptuous, naughty boy appellant is. It is true that appellant has no respect for the Court of Appeals. He would like to have respect; he just doesn't. If a showing of respect for the Court of Appeals by an appellant is a condition precedent to the granting of relief by that court, then appellant is entitled to no relief. Despite what Mr. Barris would lead This Court to believe, however, appellant does not go out of his way to insult judges. This Court will observe that appellant's Application for Leave to Appeal, Concise Statement of Proceedings and Facts, Brief, and Exhibits are free of any remarks disrespectful to the judiciary.

Appellant did receive the letters reproduced on pages 5 and 6 of Mr. Barris' Brief. IT IS *NOT* TRUE, HOWEVER, THAT HE DISREGARDED THEM. Considerable discussion of Mr. Barris' right to the transcripts was had in various pleadings filed *before* Mr. Barris' motion of January 5, 1970. (Please see exhibits 16, 17 and 18). Ultimately Mr. Barris waived his right to transcripts of early proceedings. But this waiver was *not* executed *before*

his motion of January 5. Discussion of the transcripts continued after January 5. (Please see exhibits 5, 6, 7, and 8.) Mr. Barris in his pleading of January 13, 1970 stated why he wanted the transcripts and what he hoped to prove from them. He said he intended to show that it was "the husband's eccentric and bizarre behavior which, along with other factors, impelled the Trial Court to the conclusion that he was incompetent to represent himself and thus needed a Guardian ad Litem". (Please see exhibit 7.)

On page 8 of his Brief Mr. Barris incredulously refers to appellant's affiidavit of incompetency to represent himself. Mr. Barris requested the transcripts in order to prove that appellant was incompetent to represent himself. Appellant obviated the need for these transcripts by admitting under oath that he was incompetent to represent himself. How much more sincere, forthright, and cooperative could appellant have been? Can Mr. Barris complain of appellant's failure to supply transcripts from which he hopes to prove a particular allegation after appellant admits that allegation? Having accepted the affidavit — having used the affidavit against appellant, Mr. Barris is estopped from asserting his right to the transcripts.

Perhaps it is presumptuous of appellant to speak of an estoppel. He admits that he knows next to nothing about the law. Perhaps appellant cannot always distinguish between the lawful and the unlawful, but he *can* distinguish between right and wong, between honesty and dishonesty, between sincerity and insincerity, between good faith and bad faith, between honor and dishonor. Appellant does not believe that Mr. Barris' conduct has been honorable. Does Mr. Barris think the affidavit was a gift from appellant? It was no gift! The affidavit was payment for Mr.

Barris' right to the transcripts. Can it be that Mr. Barris is still unaware of appellant's reason for making the admission? Appellant's pleading of January 15, 1970 accompanying his affidavit was perfectly clear — *"to obviate the filing of the transcripts requested,* defendant files an affidavit acknowledging that he was incompetent to represent himself." (Emphasis added. Please see exhibit 8.) Mr. Barris accepts payment for his interest in the transcripts, and then he refuses both to relinquish that interest and to return the purchase price. This conduct is no more honorable than that of a merchant who accepts payment for his goods and then refuses to deliver them. If Mr. Barris does not realize that this is wrong — morally wrong, then appellant feels terribly sorry for him.

To add insult to injury Mr. Barris, says on page 7 of his brief:

> "It is perhaps unfortunate for Mr. Rose that he "miscalculated" what would be the ultimate outcome of this failure to comply with the court rules, but such a miscalculation is scarcely a proper predicate for this Honorable Court "up turning" the order of the Court of Appeals."

Appellant did not miscalculate. He was misled by Mr. Barris. Appellant admits that he is easily misled — naive perhaps. But what is wrong with that? Does he have to be sophisticated to deal with the Court? Is the Court going to put appellant in a worse position for being naive, candid, and trusting then he would have been in if he were sophisticated, artful, and wary?

Mr. Barris' arguments pertaining to the merits of the appeal to the Court of Appeals, while irrelevant in his Brief to This Court, are, nevertheless, not totally unper-

suasive. Who knows? — he might even prevail in the Court of Appeals with these arguments *if the appeals ever be heard there.*

RELIEF

Let the appeals to the Court of Appeals be heard on their merits.

Jack Rose
23999 W. Ten Mile Rd., Suite A
Southfield, Michigan 48075
352-0952

Dated: October 9, 1970

EXHIBIT 14

Piggins, Balmer, Grigsby, Skillman & Erickson
Attorneys and Counselors
David Stott Building
Detroit, Michigan 48226
Woodward 2-7840

June 10, 1965

Re: Rose vs. Rose

Mrs. Doris Rose
19775 Magnolia
Southfield, Michigan

Dear Doris:

The pretrial hearing this morning was adjourned to August. The Judge had to attend a meeting of all Oakland County Judges and he will be away for the month of July. *In the meanwhile he very pointedly asked me if you would not consider changing your Complaint from separate maintenance to divorce.* I promised him I would explore this matter thoroughly with you.

Should you agree to do so Mr. Buesser will, of course, promptly furnish me any and all further information I may desire regarding assets and we can reschedule the depositions of Mr. Rose. Should we proceed with his deposition we would probably have to hire appraisers to determine true market values of closed corporations. All this will entail not only a great deal of time but a sizeable expense for you. It would seem wiser that we first amend our Complaint to a divorce and then submit to them a proposal of settlement in order to see if we can reach

an agreement without hiring appraisers, etc., in perparation for trial.

Please advise.

Very truly yours,
PIGGINS, BALMER, GRIGSBY,
SKILLMAN & ERICKSON
By: /s/ ROWE A. BALMER

(Emphasis added by Appellant)

EXHIBIT 15

At a session of the Court of Appeals of the State of Michigan, Held at the Court of Appeals in the City of Lansing, on the 3rd day of December in the year of our Lord one thousand nine hundred and sixty eight.

Present the Honorable
TIMOTHY C. QUINN
Presiding Judge
THOMAS GILES KAVANAGH
LOUIS D. McGREGOR
Judges

Jack Rose,
Defendant-Appellant

vs. No. 6558

Doris Wertheimer Rose,
Plaintiff-Appellee

In this cause defendant has filed an emergency application for leave to appeal, request for release on bond and a motion for immediate consideration. Plaintiff has filed answer thereto, and due consideration thereof having been had by the Court,

IT IS ORDERED that the application for leave to appeal be, and the same is hereby GRANTED.

Under the provisions of GCR 1963, 820.1(5) and (7), it is further ORDERED as follows:

1. Further consideration of the case in this Court is continued until the trial court conducts a hearing and takes testimony and determines the existence or non-existence of any premarital agreement between the parties hereto, and if such agreement is found to exist, the terms thereof. At the same hearing, the trial court shall take testimony

and determine the amount of temporary support and interim attorney fees to be awarded in this case.

2. *Plaintiff is ordered to renew her motion to amend the judgment in Rose* v. *Rose, a separate maintenance action in Oakland county circuit court so that judgment be without prejudice.*

3. Enforcement of the present order for temporary support and interim attorney fees is suspended and defendant is released from custody until the trial court has determined, after hearing, the existence or non-existence of any premarital agreement between the parties, and in the event such agreement exists, the terms thereof, and the amount of temporary support and interim attorney fees to be awarded in this case.

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 4th day of December in the year our Lord one thousand nine hundred and sixty-eight.

/s/ RONALD L. DZIERBICKI
Clerk

(Emphasis added by Appellant)

EXHIBIT 16

State of Michigan in the Court of Appeals
Appeal from the Circuit Court for the County of Oakland
The Honorable James S. Thorburn presiding

DORIS ROSE,
Plaintiff-Appellee,

vs.

JACK ROSE,
Defendant-Appellant.

Court of Appeals
No. 8562
Circuit Court
Nos. 9276
22744
68-47753

ANSWER TO MOTION FOR IMMEDIATE CONSIDERATION

Now comes plaintiff-appellee Doris Rose, by her attorney Ivan E. Barris, and for her answer to the Motion for Immediate Consideration states as follows:

1. That no grounds are stated in said Motion to warrant a deviation from the usual "time table" incident to the processing of appeals.

2. That if defendant-appellant or his family were really interested in making use of the so-called "half a million dollars", he need only file a Stay Bond in pursuance of Rule 808, MGCR.

3. That, in any event, the defendant-appellant's appeal has not been properly perfected because he has, to date, declined to either file a complete record or to serve a complete record upon counsel for plaintiff-appellee in that he has not even as yet ordered the transcripts of the numerous pretrial hearings, many of which either directly or in-

directly bear upon the propriety of the appointment of a guardian ad litem; that demand for said transcripts has previously been made and, except with respect to the transcript of one hearing, ignored; that a copy of a letter pertaining to the said subject matter previously sent to defendant-appellant is annexed hereto as Exhibit I.

4. That plaintiff-appellee cannot properly file a reply brief in this matter, nor could this Court properly comprehend or decide the one issue raised on appeal, without the transcripts of all pretrial motions being available.

WHEREFORE, plaintiff-appellee prays that the Motion for Immediate Consideration be denied.

IVAN E. BARRIS
Attorney for Plaintiff-Appellee
2066 Penobscot Building
Detroit, Michigan 48226
WO 2-8210

STATE OF MICHIGAN
COUNTY OF WAYNE
ss

On this 23d day of December, 1969 before me, a notary public, personally appeared Ivan E. Barris, who being first duly sworn, did depose and say that he has read the foregoing Answer by him subscribed and knows the contents thereof and that the same is true of his own knowledge except as to those matters therein stated to be upon information and belief, and as to such matters he believes them to be true.

DOLORES BARNHART
Notary Public Macomb County, Mich.
Acting in Wayne County,
My Commission Expires Feb. 1, 1971

EXHIBIT 17

State of Michigan in the Court of Appeals

Appeal from Oakland County Circuit Court
Nos. 09276, 22744 & 68-47753 Judge James S. Thorburn
DORIS ROSE, Plaintiff-Appellee
vs. Court of Appeals #8562
JACK ROSE, Defendant-Appellant.

REPLY TO ANSWER TO MOTION FOR IMMEDIATE CONSIDERATION

NOW COMES defendant and replies to plaintiff's Answer to Motion for Immediate Consideration.

1. Defendant *has* stated grounds in his motion to warrant a deviation from the usual "time table" incident to the processing of appeals.

2. It would impair more working capital to induce a surety to bond the judgment than the bond would free up.

3. Defendant has offered to supply transcripts of proceedings specifically requested by plaintiff's counsel (Exhibit 1 attached). But plaintiff's counsel has stubbornly and unreasonably insisted on transcripts of *all* proceedings. This litigation has been going on for nearly *six years.* The record of calendar entries (Exhibit 2 attached) discloses dozens of pre-"trial" proceedings, which took place on the following dates:

May 4, 1964
May 18, 1964
June 11, 1964
August 2, 1965
October 4, 1965
October 29, 1965
December 1, 1965
December 20, 1965
January 24, 1966
January 25, 1966
February 7, 1966
April 11, 1966

April 20, 1966
September 25, 1968
October 2, 1968
October 23, 1968
November 13, 1968
December 20, 1968
January 22, 1969
February 26, 1969
April 23, 1969
May 7, 1969
August 6, 1969
August 15, 1969
August 27, 1969

Of all these court proceedings only three had anything to do, directly or indirectly, with the appointment of the guardian ad litem — namely, those held on April 23, August 6, and August 15, 1969. Furthermore, *none* of the proceedings had any bearing whatsoever on the *propriety* of the appointment of a guardian ad litem.

4. To decide the issue of the propriety of the appointment of the guardian ad litem this Court need look no further than the four corners of the order of appointment itself. This order is void on its face; the reason stated in the order for the appointment of the guardian ad litem is no lawful justification for the appointment. Plaintiff's counsel will be unable properly to file a reply brief regardless of how many transcripts of pre-"trial" motions are available to him. Let plaintiff's counsel buy his own transcripts if he wants them. He can recover the payment if costs are awarded to the plaintiff by this Court. Whereas, if defendant is required to pay for additional transcripts he will have no way of recovering payment even if costs are awarded to him. The costs awarded defendant in the last appeal brought before this Court involving the same parties (#2237) still remain unpaid.

WHEREFORE, defendant again petitions this Court

for immediate consideration without requiring defendant to furnish any further transcripts.

/s/ Jack Rose
23999 W. Ten Mile Road
Southfield, Michigan 48075

Dated: December 30, 1969

STATE OF MICHIGAN
COUNTY OF WAYNE

On this 30th day of December, 1969 before me, a notary public, personally appeared Jack Rose, who being first duly sworn, did depose and say that he has read the foregoing Answer by him subscribed and knows the contents thereof and that the same is true of his own knowledge.

/s/ BETTY J. DENNIS,
Notary Public
Wayne County, Michigan
Acting in Oakland County

My commission expires May 1, 1970

EXHIBIT 18

State of Michigan in the Court of Appeals

Appeal from Oakland County Circuit Court

Nos. 09276, 22744 & 68-47753 Judge James S. Thorburn

DORIS ROSE, Plaintiff-Appellee

vs. Court of Appeals #8562

JACK ROSE, Defendant-Appellant.

SUPPLEMENTARY REPLY TO PLAINTIFF'S ANSWER TO MOTION FOR IMMEDIATE CONSIDERATION

NOW COMES defendant upon receipt of plaintiff's counsel's letter of December 23 (Exhibit 3 attached) and makes further reply to plaintiff's Answer to Motion for Immediate Consideration. Defendant's alleged "bizarre" behavior is *irrelevant* to the issue raised by defendant on appeal. The only reason for the order of appointment of a guardian ad litem stated in the order itself is that "defendant is incompetent to properly represent himself in this particular cause". Defendant has admitted this allegation. The order makes no reference to defendant's alleged "bizarre" behavior. Even if defendant's behavior were considered "bizarre" it would not justify an appointment of a guardian ad litem without a finding that the defendant is of unsound mind. It is defendant's understanding that "the transcript of the testimony and hearings" of Court Rule 812.3(1) refers only to the trial of the issues involved in the judgment appealed from.

WHEREFORE, defendant again petitions this Court for

immediate consideration without requiring defendant to furnish any further transcripts.

/s/ Jack Rose
23999 W. Ten Mile Rd.
Southfield, Michigan 48075
352-0952

Dated: December 30, 1969

STATE OF MICHIGAN
COUNTY OF WAYNE

On this 30th day of December, 1969 before me, a notary public, personally appeared Jack Rose, who being first duly sworn, did depose and say that he has read the foregoing Answer by him subscribed and knows the contents thereof and that the same is true of his own knowledge.
My commission expires May 1, 1970

/s/ BETTY J. DENNIS,
Notary Public
Wayne County, Michigan
Acting in Oakland County